



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240



September 29, 2014

Re: **Tobacco Warehouse, 39 – 41 Water Street, Brooklyn, New York**
Project Number: **29041**

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), National Park Service, denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank

and for meeting with me in Washington on June 2, 2014, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the additional information provided by with his letter of August 25, 2014, I have determined that the rehabilitation of the Tobacco Warehouse is not consistent with the historic character of the property and the historic district in which it is located, and that the project does not meet Standards 2, 5, and 9 of the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial issued on May 16, 2014, by TPS is hereby affirmed.

As it stood before the start of the current rehabilitation, the ca. 1868 Tobacco Warehouse was a two-story shell lacking roof, floors, and interior structure elements of any kind save a party wall between the two warehouses that were joined to form the overall property. After the National Register of Historic Places denied the requested Part 1– Certification of Significance due to the extensive alterations and demolition, upon appeal, I overturned that decision and issued the requested Part 1 certification on February 28, 2014.

TPS found that the proposed rehabilitation of this “certified historic structure” did not meet Standards 2 and 5, owing to the planned construction within the larger of the two spaces. As shown in the renderings accompanying the application, and as presented at our meeting, the new construction would rise 7’-4” above the top of the perimeter brick walls, and would feature a glass brick clerestory above the greater part of the rectangular portion, and a perforated, corrugated metal wall screening mechanical equipment at the party wall edge overlooking the triangular section of the property. In its decision, TPS determined that the addition “would alter the historic appearance and character of the structure, and, therefore, would not meet the Standards.”

I concur with TPS' assessment that the proposed rehabilitation would contravene Standards 2 and 5. Further, after reviewing the in-progress photographs supplied with [redacted] letter, I have determined that the new construction also contravenes Standard 9. The photographs of the completed steelwork confirm that the new construction unacceptably alters the "height, massing, and rooflines" of the Tobacco Warehouse, cited by TPS as "character-defining" features. Additionally, the glass brick and corrugated metal contrast markedly with the warehouse's brick walls and the sense of solidity they convey—features that figured prominently in my previous decision that, even in its diminished state, the Tobacco Warehouse contributed to the significance of the Fulton Ferry Historic District.

As a result, and for the reasons given above, I find that the rehabilitation contravenes Standards 2, 5, and 9. Standard 2 states: "*The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*" Standard 5 states: "*Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.*" Standard 9 states: "*New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*"

At our meeting we discussed the visibility of the new construction, and whether the views shown in the renderings reflected the reality of the situation on the ground. This question naturally leads to the larger issue raised by [redacted] in his letter, namely, whether and how much the historic context and approaches to the Tobacco Warehouse should govern the present evaluation of the rehabilitation [for, as he admits, "The clerestory is without doubt a visible extension on top of the historic Tobacco Warehouse"]. However, that argument is not relevant to the basis for the denial, the overall loss of historic character. Even if the new construction were not visible from *without*, it would still be seen from *within*—from within the walls of the theater portion at the eastern end and from within the western portion, which will remain unroofed, empty, and open to the public. And even from within the confines of the perimeter walls, the new construction would be seen as a starkly modern insertion within the historic walls and thus impair the overall historic character Tobacco Warehouse.

Consequently, I have no recourse but to find that the project fails the minimum statutory test for certification, namely, that a rehabilitation must preserve the overall historic character of a "certified historic structure."

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the May 16, 2014, denial that TPS issued regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,



John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO-NY
IRS